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10 **BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

11
12 In the Matter of the Accusation Against:

Case No. **2011-1003**

13 **ANDREA MARIE L. CATER**
14 **aka ANDREA MARIE LECHOWIT**
12691 Antelope Hills Drive
15 Lakeside, CA 92040

A C C U S A T I O N

16 **Registered Nurse License No. 380917**

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about December 31, 1984, the Board of Registered Nursing issued Registered
24 Nurse License Number 380917 to Andrea Marie L. Cater (Respondent). The Registered Nurse
25 License was in full force and effect at all times relevant to the charges brought herein and will
26 expire on July 31, 2012, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board

1 may inquire into the circumstances surrounding the commission of the crime in order
2 to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"
4 and "registration."

5 9. Section 2761 of the Code states:

6 The board may take disciplinary action against a certified or licensed nurse or
7 deny an application for a certificate or license for any of the following:

8 (a) Unprofessional conduct, which includes, but is not limited to, the
following:

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10 (f) Conviction of a felony or of any offense substantially related to the
11 qualifications, functions, and duties of a registered nurse, in which event the record of
the conviction shall be conclusive evidence thereof.

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13 10. Section 2762 of the Code states:

14 In addition to other acts constituting unprofessional conduct within the meaning
15 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
licensed under this chapter to do any of the following:

16 (a) Obtain or possess in violation of law, or prescribe, or except as directed by a
17 licensed physician and surgeon, dentist, or podiatrist administer to himself or herself,
or furnish or administer to another, any controlled substance as defined in Division 10
18 (commencing with Section 11000) of the Health and Safety Code or any dangerous
drug or dangerous device as defined in Section 4022.

19 (b) Use any controlled substance as defined in Division 10 (commencing with
20 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
21 dangerous or injurious to himself or herself, any other person, or the public or to the
extent that such use impairs his or her ability to conduct with safety to the public the
22 practice authorized by his or her license.

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24 11. Section 2765 of the Code states:

25 A plea or verdict of guilty or a conviction following a plea of nolo contendere
26 made to a charge substantially related to the qualifications, functions and duties of a
registered nurse is deemed to be a conviction within the meaning of this article. The
27 board may order the license or certificate suspended or revoked, or may decline to
issue a license or certificate, when the time for appeal has elapsed, or the judgment of
conviction has been affirmed on appeal or when an order granting probation is made
28 suspending the imposition of sentence, irrespective of a subsequent order under the

1 provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his
2 or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of
3 guilty, or dismissing the accusation, information or indictment.

4 REGULATORY PROVISIONS

5 12. California Code of Regulations, title 16, section 1444, states:

6 A conviction or act shall be considered to be substantially related to the
7 qualifications, functions or duties of a registered nurse if to a substantial degree it
8 evidences the present or potential unfitness of a registered nurse to practice in a
9 manner consistent with the public health, safety, or welfare. Such convictions or acts
10 shall include but not be limited to the following:

11 (a) Assaultive or abusive conduct including, but not limited to, those violations
12 listed in subdivision (d) of Penal Code Section 11160.

13 (b) Failure to comply with any mandatory reporting requirements.

14 (c) Theft, dishonesty, fraud, or deceit.

15 (d) Any conviction or act subject to an order of registration pursuant to Section
16 290 of the Penal Code.

17 13. California Code of Regulations, title 16, section 1445 states:

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19 (b) When considering the suspension or revocation of a license on the grounds
20 that a registered nurse has been convicted of a crime, the board, in evaluating the
21 rehabilitation of such person and his/her eligibility for a license will consider the
22 following criteria:

23 (1) Nature and severity of the act(s) or offense(s).

24 (2) Total criminal record,

25 (3) The time that has elapsed since commission of the act(s) or offense(s).

26 (4) Whether the licensee has complied with any terms of parole, probation,
27 restitution or any other sanctions lawfully imposed against the licensee.

28 (5) If applicable, evidence of expungement proceedings pursuant to Section
1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

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1 COSTS

2 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licensee found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(December 20, 2007 Criminal Conviction for Burglary on August 18, 2006)**

8 15. Respondent has subjected her license to disciplinary action under sections 490 and
9 2761, subdivision (f) of the Code in that she was convicted of a crime that is substantially related
10 to the qualifications, functions, and duties of a registered nurse. The circumstances are as
11 follows:

12 a. On or about December 20, 2007, in a criminal proceeding entitled *People of the*
13 *State of California v. Andrea Marie Cater, aka Andrea Marie Lechowit Cater*, in San Diego
14 County Superior Court, case number M020855, Respondent was convicted on her plea of no
15 contest of violating Penal Code section 459, burglary. An additional count of violating Penal
16 Code section 666/484a/488, petty theft with a prior, was dismissed pursuant to a plea agreement.

17 b. As a result of the conviction, on or about December 20, 2007, Respondent was
18 sentenced to three years summary probation, and ordered to serve one day in jail, with credit for
19 one day. Respondent was further ordered to complete a Shoplifting Class, pay \$846.00 in fees,
20 fines, and restitution, and to waive her Fourth Amendment rights during the term of her
21 probation.

22 c. The facts that led to the conviction are that on or about the afternoon of August
23 18, 2006, Respondent was observed by loss prevention officers shoplifting at a San Diego
24 department store. Respondent left the store without paying for items she had hidden in a store
25 shopping bag and her purse. Respondent was intercepted by the loss prevention officers outside
26 the store. Respondent was taken to the loss prevention office where the clothing items were
27 recovered from the shopping bag, as well as other clothing and jewelry in Respondent's purse.
28 While Respondent was being searched by a loss prevention officer, she removed a glass smoking

1 pipe from her shirt, threw it on the floor, and stepped on it until it broke. The San Diego Police
2 Department was notified and Respondent was taken into custody. The estimated value of the
3 recovered merchandise was \$404.00

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(December 20, 2007 Criminal Conviction for Petty Theft on February 19, 2007)**

6 16. Respondent has subjected her license to disciplinary action under sections 490 and
7 2761, subdivision (f) of the Code in that she was convicted of a crime that is substantially related
8 to the qualifications, functions, and duties of a registered nurse. The circumstances are as
9 follows:

10 a. On or about December 20, 2007, in a criminal proceeding entitled *People of the*
11 *State of California v. Andrea Marie Cater*, in San Diego County Superior Court, case number
12 M022756, Respondent was convicted on her plea of guilty of violating Penal Code section
13 484a/488, petty theft. Additional counts of violating Health and Safety Code section 11377,
14 subdivision (a), possession of a controlled substance, and Health and Safety Code section 11364,
15 possession of drug paraphernalia, were dismissed pursuant to a plea agreement.

16 b. As a result of the conviction, on or about December 20, 2007, Respondent was
17 sentenced to three years summary probation and ordered to serve one day in jail, with credit for
18 one day. Respondent was further ordered to perform 10 days of public work service, with credit
19 for one day served, complete a Shoplifting Class (concurrent with the sentence in case number
20 M020855, above), and pay \$541.00 in fees, fines, and restitution. Respondent was required to
21 waive her Fourth Amendment rights during the term of her probation

22 c. The facts that led to the conviction are that on or about the afternoon of
23 February 19, 2007, a loss prevention officer of a San Diego department store observed
24 Respondent put several items of merchandise into her bag. Respondent went to a register and
25 paid for some items, but she left the store without paying for the merchandise she placed in her
26 bag. Respondent was intercepted after she left the store and then detained in the store's loss
27 prevention office until an officer from the San Diego Police Department responded. Upon
28 searching Respondent's purse, the police officer found a plastic ziplock baggie with an off-white

1 substance determined to be methamphetamine. Also located in Respondent's purse was a glass
2 pipe with white, burnt residue, commonly used to smoke methamphetamine. The officer
3 conducted a records check and discovered that Respondent had an outstanding warrant for her
4 arrest. Respondent was taken into custody.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(December 11, 2008 Criminal Conviction for Petty Theft**
7 **with a Prior on November 26, 2008)**

8 17. Respondent has subjected her license to disciplinary action under sections 490 and
9 2761, subdivision (f) of the Code in that she was convicted of a crime that is substantially related
10 to the qualifications, functions, and duties of a registered nurse. The circumstances are as
11 follows:

12 a. On or about December 11, 2008, in a criminal proceeding entitled *People of the*
13 *State of California v. Andrea Marie Cater*, in San Diego County Superior Court, case number
14 CE286042, Respondent was convicted on her plea of guilty of violating Penal Code section 484,
15 petty theft. The court also found true that Respondent was previously convicted of petty theft
16 (Pen.Code, § 484a/488) on December 20, 2007, in case number M022756 (paragraph 16, above),
17 within the meaning of Penal Code section 666.

18 b. As a result of the conviction, on or about December 11, 2008, Respondent was
19 sentenced to three years summary probation and ordered to serve 24 days in jail, with credit for
20 24 days. Respondent received \$563 credit towards her fine with 16 days served.

21 c. The facts that led to the conviction are that on or about the afternoon of
22 November 26, 2008, Respondent was observed by a loss prevention officer shopping at a San
23 Diego grocery store. Respondent placed several items in her shopping cart and as she walked
24 around the store, she placed a bottle of olives, two candy bars, and a roll of cheese into her purse.
25 Respondent paid for the items in her cart, but did not pay for the four items she put in her purse.
26 Respondent was intercepted by the loss prevention officer after she left the store, and she was
27 taken to the employee's break room until law enforcement arrived. A deputy from the San Diego
28 County Sheriff's Department conducted a records check and discovered that Respondent had a

1 warrant for her arrest, and she was on probation for petty theft. Respondent was arrested. The
2 deputy searched Respondent's personal belongings. Inside a makeup bag, the deputy found a
3 small, clear baggy containing a crystalline substance that subsequently tested positive for
4 methamphetamine. There was also a glass pipe commonly used for smoking methamphetamine
5 in the bag. Respondent was transported to the sheriff's substation where she provided two vials
6 of blood for testing. Respondent told the deputy that she had used methamphetamine twice in the
7 previous 24 hours. The deputy conducted a field sobriety test on Respondent. Respondent was
8 unable to follow his simple directions; she showed signs of hyperactivity, she was agitated, and
9 she had a pasty, white coating on her tongue. Respondent was charged with possession of
10 methamphetamine, possession of controlled substance paraphernalia, being under the influence of
11 methamphetamine, and petty theft.

12 **FOURTH CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct – Possession of a Controlled Substance & Paraphernalia)**

14 18. Respondent has subjected her license to disciplinary action under section 2762,
15 subdivision (a) of the Code in that on or February 19, 2007, and November 26, 2008, as described
16 in paragraphs 16 and 17, above, Respondent possessed methamphetamine. Methamphetamine is
17 a Schedule II controlled substance as designated by Health and Safety Code section 11055,
18 subdivision (d)(2), and a dangerous drug pursuant to Business and Professions Code section
19 4022. Respondent further possessed controlled substance paraphernalia, to wit, a glass pipe used
20 for smoking methamphetamine, a dangerous device.

21 **FIFTH CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct – Under the Influence of a Controlled Substance)**

23 19. Respondent has subjected her registered nurse license to disciplinary action under
24 section 2762, subdivision (b) of the Code in that on or about November 26, 2008, as described in
25 paragraphs 17, above, and per her own admission, Respondent was under the influence of an
26 illegal controlled substance. The use of methamphetamine is dangerous to one's health and well-
27 being and Respondent committed a criminal offense while impaired by methamphetamine.

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